



INTERIOR BOARD OF INDIAN APPEALS

Verna McGough v. Sacramento Area Director, Bureau of Indian Affairs

28 IBIA 146 (08/31/1995)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

VERNA McGOUGH,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-80-A
SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 31, 1995

Appellant Verna McGough ^{1/} seeks review of a January 30, 1995, decision issued by the Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying her application for a loan guaranty in the amount of \$100,000. Appellant's petition for expedited consideration is hereby granted.

Appellant applied for a loan guaranty to establish a business called Advanced Professional Support Services (APSS). According to a consulting report prepared for appellant by the Small Business Institute Program at the California State University, Fresno, APSS would be "a provider of Pen-Based and optical storage systems to the medical community in the Central Valley [of California]. These systems enable practitioners to store patient documentation and other information electronically" (Consulting Report at vi). Appellant's Business Plan states that she intends to market "an electronic medical billing service, and a PDA (personal digital assistant, or "clipboard" computer) hardware and software sales and support service, through which we will market a 'paperless' office system of software and hardware" (Business Plan at 14).

By letter dated January 30, 1995, the Area Director denied appellant's application.

The Board begins by repeating that the decision whether to approve an application for a loan guaranty is committed to BIA's discretion, and that the Board's role in reviewing these decisions is limited. The Board does not substitute its judgment for that of BIA, but rather reviews BIA's decision to ensure that all legal prerequisites to the exercise of discretion were met. Abbott Bank v. Aberdeen Area Director, 23 IBIA 243, 244 (1993), and cases cited therein. Appellant bears the burden of proving the error in the Area Director's decision. Lente-Dawson v. Albuquerque Area Director, 27 IBIA 289 (1995); Moses v. Portland Area Director, 27 IBIA 279 (1995).

^{1/} This appeal was originally docketed as Advanced Professional Support Services v. Sacramento Area Director. The name has been changed to describe the appellant more accurately.

25 CFR 103.11 states that a loan guaranty may be given “only when, in the judgment of [BIA], there is a reasonable prospect of repayment of the loan.” Appellant stated that she intended to repay this loan through the profits of the business (Notice of Appeal at 4). A September 8, 1994, Credit Authorization prepared by appellant's bank stated that the bank considered the primary source of repayment for the loan to be “income” and the secondary source to be the “BIA guarantee.” Despite appellant's statements on appeal that she had collateral, including personal property, to secure the loan, it is clear that the bank was not looking to any collateral for repayment.

The Area Director listed several concerns with appellant's application, two of which directly relate to the issue of whether there is a “reasonable prospect of repayment of the loan.” At page 2 of his decision, the Area Director indicated concerns about the marketing aspects of the plan:

It is obvious that the applicants have done a considerable amount of research on the product they intend to distribute; however they have not completed an in-depth market survey. * * * The business plan provides very little information regarding their potential customer base other than medical practices located in the Central Valley.

Also on page 2 of his decision, the Area Director stated that

[t]he revenue projections appear to be overly optimistic. * * * The representative [of the company owning the pen-based technology appellant intends to market] indicated that generally a company could anticipate their first sale in approximately two to three months. However, the pro-formas reflect a sale in the first month of operation. The total number of sales reaches fifty-eight in the first year of operation. As a distributor just entering the market, it could be difficult to achieve this sales volume.

Appellant responds that it is impossible to do an in-depth market survey because of “the insulation the medical community has to outsiders” (Notice of Appeal at 6). She indicates that her target market is “2,252 MD's, 667 DDS's, 294 physical therapists, 300 DC's, 181 psychologists, 376 licensed social workers, and 166 OD's--a total of over 4,278 practitioners, with a few other specialties not being counted. Further, there are an unknown number of ‘rest homes’ and ‘convalescent homes,’ all of which process claims to insurance companies” (Business Plan at 7).

Appellant's business plan contains numerous references to the reluctance of physicians to adopt new technologies, especially ones involving computerization. See, e.g., Business Plan at 4, 9, 24. Appellant intends to break into this closed field through

a list of professionals with whom we have a personal relationship-people we know already. We will address these people first, offering reduced prices and special services in order to secure the

first few clients. We expect word of mouth to spread the value of our service quickly throughout the industry, leading to referrals.

(Business Plan at 25).

Based on the information provided by appellant, it was not unreasonable for the Area Director to conclude that, despite appellant's research and her possible contacts, her proposed business venture was still highly speculative. Appellant's success depends entirely upon her ability to break into a market which she herself described as closed and reluctant to accept new technologies. Appellant clearly has a more optimistic view of her prospects for success, and thus for her ability to repay the loan, than does the Area Director. This difference of opinion, however, does not require the reversal of the Area Director's judgment that there was not a reasonable prospect for repayment of the loan.

Because the Board concludes that appellant's application was properly denied for the above reason, it finds that discussion of appellant's remaining arguments is not necessary. 2/

As dicta, the Board also notes that it appears appellant's application could, and perhaps should, have been denied for the additional reason that she has not even attempted a showing that her proposed business venture would "contribute beneficially to the economy of an Indian reservation" as is required by 25 CFR 103.2 (a), a requirement which is mentioned at page 5 of the BIA booklet Financial Assistance for Indian Economic Development Projects, which appellant included at Tab 22 of the documents she submitted with her notice of appeal ("Loan purpose--* * * These loans must benefit the economy of an Indian reservation"). Danard House Information Services Division, Ltd. v. Sacramento Area Director, 25 IBIA 212, 221-22 (1994); Nagel v. Acting Phoenix Area Director, 25 IBIA 174, 177 (1994); Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153, 161-62 (1992).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Sacramento Area Director's January 30, 1995, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ The Board notes that many of appellant's arguments are directed toward a credit memorandum in the administrative record. The Area Director's decision is set out in his Jan. 30, 1995, letter, not in the credit memorandum. Those aspects of the credit memorandum not specifically incorporated into the decision were implicitly rejected and/or found not necessary to the decision.